

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Case No.: 09-cv-02098 (JNE/FLN)

Operating Engineers Local #49 Health and
Welfare Fund and Central Pension Fund of the
International Union of Operating Engineers and
Participating Employers, Local #49 International Union
Of Operating Engineers and Associated General
Contractors of Minnesota Apprenticeship and Training
Program and their Trustees,

Plaintiffs,

vs.

ORDER

Todd Schmidt d/b/a TMS Construction

Defendant.

Based upon the Findings of Fact, Conclusions of Law, and
Recommendation by United States Magistrate Judge Franklin L. Noel dated December
7, 2009, all the files and records, and no objections having been filed to said Report and
Recommendation,

IT IS HEREBY ORDERED that:

1. That Plaintiffs' Motion for Default Judgment and Injunction is
GRANTED.

2. That Schmidt is ORDERED to submit the fringe benefit reports for the
period May, 2009 to October, 2009 that correctly identify the hours worked by his
employees pursuant to the Collective Bargaining Agreement.

3. That Schmidt submit the required reports to the Funds' third party
administrator, Wilson-McShane Corporation, 3001 Metro Drive, Suite 500,

Bloomington, MN 55425 within ten (10) days of the date on which it is served with a copy of the Order.

4. That there being no just reason for delay, the Court orders entry of judgment on the foregoing injunction pursuant to Fed. R. Civ. P. 54(b).

5. That the Court further DECLARES that Schdmit is liable to the Funds for:

- a. Delinquent contributions and liquidated damages due and owing for the period May, 2009 to October, 2009 pursuant to the Collective Bargaining Agreement; and
- b. The Funds' reasonable attorneys' fees and costs incurred in pursuing delinquent contributions.

6. That the Court determines the amount of contributions, liquated damages, and attorneys' fees and costs as follows:

- a. After receiving the fringe benefit reports, the Funds may file and serve a Motion for Entry of a Money Judgment in the amount the Funds determine that Schmidt owes for delinquent contributions and liquidated damages for the period May, 2009 to October, 2009 as well as reasonable attorneys' fees and costs.
- b. Schmidt may then file and serve a response to the Funds' Motion within ten (10) days of the date the Funds' Motion is served
- c. The Court will examine the parties' submissions and issue an order for judgment as the Court deems appropriate. No hearing will be held unless the Court orders otherwise.

DATED: January 8, 2010.
Minneapolis, Minnesota

s/ Joan N. Ericksen
JUDGE JOAN N. ERICKSEN
United States District Court